

## Recent Kentucky Laws Address Polygraphs in Sex Crimes

**95.021** Police officer prohibited from requesting or requiring victim of alleged sexual offense to submit to polygraph or other examination — Other prohibitions.  
No **police officer** shall:

- (1) As a condition of proceeding with an investigation or prosecution of a case, request or require a victim of an alleged sexual offense to submit to a polygraph examination or any other device designed for the purpose of determining whether a person is telling the truth; or
- (2) Charge or threaten to charge the victim of an alleged sexual offense with prosecution for a criminal offense for refusing to submit to a polygraph examination or other device designed for the purpose of determining whether a person is telling the truth.

**16.062** Prohibition against requesting or requiring victim of alleged sexual offense to submit to polygraph or other examination — Other prohibitions.  
No officer of the **Kentucky State Police** shall:

- (1) As a condition of proceeding with an investigation or prosecution of a case, request or require a victim of an alleged sexual offense to submit to a polygraph examination or any other device designed for the purpose of determining whether a person is telling the truth; or
- (2) Charge or threaten to charge the victim of an alleged sexual offense with prosecution for a criminal offense for refusing to submit to a polygraph examination or other device designed for the purpose of determining whether a person is telling the truth.

**69.008** Commonwealth's and county attorneys prohibited from requesting or requiring victim of alleged sexual offense to submit to polygraph or other examination — Other prohibitions.  
No **Commonwealth's or county attorney** shall:

- (1) As a condition of proceeding with an investigation or prosecution of a case, request or require a victim of an alleged sexual offense to submit to a polygraph examination or any other device designed for the purpose of determining whether a person is telling the truth; or
- (2) Charge or threaten to charge the victim of an alleged sexual offense with prosecution for a criminal offense for refusing to submit to a polygraph examination or other device designed for the purpose of determining whether a person is telling the truth.

case made the polygraph a necessary part of the defendant's evidence.

A Jefferson County jury convicted John Elvis Rogers of murder, first-degree robbery and first-degree burglary in 2002, but Rogers appealed his conviction in part based on a polygraph he was given during the investigation. Rogers was found to be mentally retarded, and claimed that he confessed to the crimes only after being told he failed the polygraph exam.

"Appellant (Rogers) contends that when the investigating officers informed him that he had failed the polygraph examination and that he had lied to [the polygraph examiner] in the process, he — in large part because of his limited intellectual capabilities — confessed to a crime he did not commit. By preventing appellant from making any reference to the polygraph examination, the trial court pulled the proverbial rug out from under appellant's

defense and left appellant unable to present the jury with the factual circumstances that he alleged caused him to confess falsely."

Rogers' conviction was reversed and his case was remanded back to the Jefferson County Circuit Court.

"We think that, number one, failing the polygraph means you're guilty, and the corollary is that passing the polygraph must mean you're innocent," said Shawn Herron, Department of Criminal Justice Training staff attorney. "That is not necessarily the case. It is really more of an indicator. Something to follow up on. The Court is afraid that if you put it in front of a jury, the jury will take it as a technology and take it too definitively. That's the basic reason why you have to be careful with it. Most examiners will tell you, 'I'm good, but I'm not perfect.' And realistically, that's the only standard you need for Daubert."

In response to the unfavorable results from Kentucky's appellate courts, American Polygraph Association Legal Counsel Gordon Vaughan said the problem lies more in understanding the science than in proving the polygraph's accuracy.

"I think a major problem — though perhaps not determinative in most cases — is that in the cases currently going to the appeals courts, an inadequate record is being made about polygraph and the current science," he said. "The court is given no reason to change from the prior opinions."

Vaughan elaborated, saying that in many cases, attorneys do not call scientists who are sufficiently versed in the current polygraph research as expert witnesses to testify about the validity of the testing or submit peer review that supports it.

"A lot of lawyers, particularly the ones who are usually interested in putting this on, are usually public defenders, who >>